

**Item 45**  
**Ex Parte Complaint Case**  
**C05-11-011**

**Statement of Commissioner Timothy Simon**  
**July 12, 2007**

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Colleagues:

I plan to vote for Item 45 and file a concurrence. I concur that the actions of Cox and SBC, now AT&T, constitute a violation of the prohibition on ex parte communications in this proceeding.

However, I do not believe that a complaint case involving one or two parties is the appropriate forum for setting policies that will apply to an entire industry, including companies who cannot make their voice heard in the complaint proceeding. Thus, I find the recommendation of Cox and AT&T that the Commission open a rulemaking proceeding to set policy and rules concerning "warm-line" telecommunications services that reflect current technologies and market conditions – the communication that led to this fine – as a reasonable recommendation. I will review with deep skepticism any outcomes of this proceeding that move beyond the facts of this case and attempt to fashion policies for the entire state.

Also, I wish to note that I have deep sympathy for Commissioner Peevey's view that the custom and practice here at the Commission have made it difficult to draw a clear line separating a permissible communications on procedures for addressing a policy issues from an impermissible communication concerning the substance of a complaint. Given the arcane technical nature of our ex parte rules and the lack of a bright line and enforcement procedures that can ensure that the current rules are followed, it is difficult to see this violation as anything but a technical violation of very technical rules.

Nevertheless, I agree that a violation of ex parte rules has occurred, and will therefore support the findings and sanctions reached here.